In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1615

FRANK GUGLIELMINI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Eastern District of New York, petitioner was convicted on two counts of concealing from a receiver and from creditors the assets of a bankrupt, in violation of 18 U.S.C. 152. The court of appeals affirmed (Pet. App. 1a-8a).

Petitioner contends in his petition, as he did below, that the government was improperly permitted to escape from a stipulation not to use the grand jury tes-

timony of a witness, and that the statute of limitations had expired prior to indictment, since the tolling provision (18 U.S.C. 3284) does not in terms provide for tolling the running of the period of limitations under 18 U.S.C. 152, where, as here, there is a *waiver* of discharge by the bankrupt as opposed to a "denial of discharge." These contentions are thoroughly treated and answered in the opinion of the court of appeals, on which we rely. We note only that, contrary to petitioner's assertion, nothing in *Toussie* v. *United States*, 397 U.S. 112, which dealt with the "continuing offense doctrine," casts doubt on or is inconsistent with the court of appeals' holding that Congress intended the statute of limitations under 18 U.S.C. 152 to be tolled by a waiver of discharge, which has precisely the same effect as a denial. In contrast to the situation in *Toussie*, the holding below is different from a finding, in questionable circumstances, that 18 U.S.C. 152 prescribes a continuing offense—a matter affirmatively and explicitly established by the first clause of 18 U.S.C. 3284. Rather, it simply represents a determination that, under the second clause of Section 3284, Congress intended to interrupt the running of the limitations period in situations such as that here involved.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1970.

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